

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA)
EX REL. THOMAS GERAHTY and)
THOMAS BURKE)

Plaintiffs,)

-against-)

GLAXOSMITHKLINE PLC and)
SMITHKLINE BEECHAM CORP. d/b/a)
GLAXOSMITHKLINE)

Defendant)

No. 03-CV-10641

Hon. Nancy Gertner

**FILED IN CAMERA AND UNDER
SEAL PURSUANT TO
31 U.S.C. § 3730**

also filed in

UNITED STATES OF AMERICA)
EX REL. GREGORY W. THORPE and)
BLAIR HAMRICK)

Plaintiffs,)

-against-)

SMITHKLINE BEECHAM, INC. and)
GLAXOSMITHKLINE PLC d/b/a)
GLAXOSMITHKLINE)

Defendant)

No. 11-CV-10398

Hon. Nancy Gertner

**FILED IN CAMERA AND UNDER
SEAL PURSUANT TO
31 U.S.C. § 3730**

**MEMORANDUM IN SUPPORT OF THE UNITED STATES' *EX PARTE* NOTICE OF
RELATED CASES AND APPLICATION FOR ADMINISTRATIVE CONSOLIDATION**

This memorandum supports the *ex parte* motion of the United States to consolidate this case with another *qui tam* action filed in this district, *United States, et al., ex rel. Thorpe & Hamrick v. GlaxoSmithKline, et al.* (C.A. No. 11-10398). The United States also requests that the complaint and

all related filings in the latter case remain under seal until May 17, 2011 when the United States is required to serve its complaint in intervention on GSK pursuant to prior order of this Court.

BACKGROUND

Relators Thomas Gerahty and Thomas Burke filed their sealed *qui tam* action under the False Claims Act, 31 U.S.C. §§ 3729–3733, in this District in 2003. Gregory Thorpe and Blair Hamrick also filed a *qui tam* action against GSK in 2003, in the District of Colorado. Both of these complaints allege that the defendant GlaxoSmithKline (“GSK”) engaged in schemes to promote GSK prescription drug products for unapproved uses not eligible for reimbursement by federal health care programs and that GSK paid kickbacks to physicians to induce them to prescribe GSK drugs. The United States has been diligently investigating the relators’ allegations from 2003 to the present.

The United States’ filed its notice of intervention in this case on January 14, 2011, and the Court granted an Order giving the United States until May 17, 2011 to serve its complaint in intervention on GSK. On March 3, 2011 the United States District Court for the District of Colorado transferred the Thorpe Complaint to the District of Massachusetts where it was assigned to the Honorable Judge Gertner.

ARGUMENT

A. The Gerahty and Burke and Thorpe and Hamrick Cases Should be Consolidated

Because the *Gerahty and Burke* and *Thorpe and Hamrick* complaints have overlapping allegations and factual underpinnings, and because these matters have been jointly investigated for several years, it makes sense for them to be handled together for the purposes of intervention and litigation. To the extent any competing interests arise, consolidation will enable the Government to

present them before the same Court. Accordingly, the Government asks that these two actions be administratively consolidated.

Pursuant to Local Rule 40.1(J), this motion for consolidation has been filed in the first case filed in Massachusetts (the *Gerahty and Burke* case). If consolidation is denied, the United States asks that this motion serve as a motion separately filed in the *Thorpe and Hamrick* case and that Judge Gertner then decide whether to extend the seal date to May 17, 2011 in the *Thorpe and Hamrick* case, as requested below.

B. Good Cause Exists to Extend the Seal Period in the *Thorpe* Complaint until May 16, 2011

The United States requests that the Court issue an order clarifying that the *Thorpe* complaint, and all related filings, shall remain under seal until May 16, 2011, when the Government's complaint in intervention is due in this case. The United States is currently seeking authority to intervene in the *Thorpe* complaint as well and intends to file a consolidated complaint in intervention. Therefore, the United States submits that good cause exists for keeping the *Thorpe* complaint and related filings under seal through May 16, 2011.

The relators, through their counsel, have informed the Government that they have no objection to the Government's request for an extension. To simplify matters, the Government respectfully requests that any extension of the seal be for the benefit of the States and the District of Columbia as well as the United States.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court consolidate this case with *United States, et al., ex rel. Thorpe & Hamrick v. GlaxoSmithKline, et al.* (C.A. No. 11-10398); and that Court issue an order clarifying that the deadline for intervention in both of the

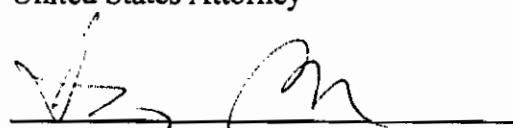
consolidated cases shall be May 17, 2011, and that the complaints and all other filings shall remain under seal until that time.

Dated: March 21, 2011
Boston, Massachusetts

Respectfully submitted,

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